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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/691,162

10/22/2003

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E-3623

5978

7590 04/27/2010  
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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1781

MAIL DATE

DELIVERY MODE

04/27/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/691,162	<b>Applicant(s)</b> RADATTI ET AL.	
	<b>Examiner</b> Carolyn A. Paden	<b>Art Unit</b> 1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 23,24,37 and 39-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23,24,37 and 39-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

Claim 24 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for cellulose, does not reasonably provide enablement for insoluble fiber that is cellulose. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims. Cellulose is described as a bulking agent on page 4, line 5 of paragraph 2 and not an insoluble fiber.

Claims 37, 39 and 40 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a food mixture with animal protein as set forth in example III and VI, does not reasonably provide enablement for a dough with gas bubbles that contains animal protein. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims. The bread dough with gas bubbles in example IV does not contain animal protein concentrate, as required in the claim. There is not suggestion that the food product in examples III and VI is dough.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23, 24, 37, 39 and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tye (5,308,636) for reasons of record.

Tye is directed to thickened and gelled systems based on starch and glucomannan. Example 6 is directed to an extruded snack made from konjac, baking powder and cheese powder as a source of animal protein. The extrusion of the product under appropriate temperature is seen to provide the cooking temperature. The cooking in the extruder is seen to provide the gas bubbles from the expanding dough that is under pressure. The baking powder would also be expected to provide a useful source of gas bubbles. Further example 9 describes a surimi analogue made from konjac, fish and potassium carbonate with starch and water. The ingredients are mixed, placed in casings and cooked at 85-90C. The final product was said to have higher gel strength and less syneresis than a product without konjac. In this case potassium carbonate would be expected to provide a useful source of gas bubbles. The claims appear to differ from Tye in the recitation of an example showing a product heated to above 100C. Columns 3-4 of Tye describe the various ways in which the

Konjac may be treated. Pre-hydrated konjac is made by hydrating the konjac at 25-100C for 5-30 minutes depending on the temperature (column 4, lines 18-26). Thermally stable gels are made by first preparing a konjac/starch sol as an admixture. After including alkali, the combination is heated to between 50-100C (column 4, lines 45-54). It is also very well known in the art one may reduce cooking times in food processes by using higher cooking temperatures. It would have been obvious to one of ordinary skill in the art to increase the cooking temperature of Tye's extruded snack and surimi analogue to reduce the processing time of the product. It is appreciated that fibers are not mentioned but to include insoluble fibers as bulking agents in Tye would have been an obvious way to alter the texture and caloric content of the extruded snack food. It is also appreciated that the animal proteins of claim 39 are not mentioned but surimi is a known source of fish and would be expected to contain protein.

Applicant argues that Example 6 does not show the heat treatment required in the claims. This has been considered but is not persuasive. As discussed above, it is known in the art to apply temperatures to 100C to hydrate the konjac preparations. Higher the temperatures are known to require shorter processing times. It would have been obvious to one of

ordinary skill in the art to heat the product of Tye to above 100 C to shorten the cooking time or the product. Further the claims are directed to a product and not to a process. No difference is seen between the product of the cooking time of Tye and the product of the claims. Applicant argues that Tye does not disclose an admixture of konjac and animal protein. But the claims are directed to a cooked food product that is dough with gas bubbles in it. The fact that that the initial ingredients may or may not have been an admixture is not seen to constitute unobviousness in the product set forth in the claims.

The rejection of claims 37-40 under 35 USC 112, second paragraph has been withdrawn in response to applicants' amendments to the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-

1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1781

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